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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,670	09/05/2003	Will Wood	40124/02301	1719

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EXAMINER

PIERCE, JEREMY R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/656,670

Applicant(s)

WOOD ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7-25 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-19 and 22-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/6/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed on September 6, 2005 has been entered. Claims 1, 7, 11, and 24 have been amended. Claim 6 has been cancelled. New claim 25 has been added. Claims 1-5 and 7-25 are currently pending with claims 20 and 21 withdrawn from consideration being drawn to a non-elected invention.
2. Applicant's amendment is sufficient to overcome some of the 35 USC 112 rejections set forth in section 7 of the last Office Action. Applicant's amendment also overcomes the 35 USC 102 and 103 rejections set forth in sections 10 and 13 of the last Office Action because Wood et al. (U.S. Patent No. 5,776,842) do not address the limitation of amount of cyclodextrin now incorporated into claim 1.

### ***Election/Restrictions***

3. Applicant's affirmation of the election of Group I claims in the reply filed on September 6, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

4. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

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required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim in independent form. Claim 11 broadens the range of malodor scavenging material dispersed in the fiber. However, dependent claims must further limit parent claims.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-5, 7-19, and 22-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 1 recites the fibers contain "particles of zinc, an elemental alkaline earth metal or elemental transition metal of the fourth or fifth period of the periodic table, said particles being essentially free of corresponding oxide, or a cyclodextrin material."

There is no support in the specification for the limitation of "an elemental alkaline earth metal or elemental transition metal of the fourth or fifth period of the periodic table, said particles being essentially free of corresponding oxide."

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 2-5, 7, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-5, 7, and 18 all use the phrase "zinc or similar reacting metal or metal alloy." The phrase "or similar reacting metal or metal alloy" renders the claims indefinite because the claims include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-5, 7-11, 13, 16-19, and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Trinh et al. (U.S. Patent No. 5,429,628).

Trinh et al. disclose a material comprising fibers (column 6, lines 45-58) and particles of cyclodextrin dispersed throughout (Abstract). The cyclodextrin may be used in an amount of 1% by weight (See Example 7). With regard to claims 2-5 and 7, the presence of zinc particles is not required in the claims. With regard to claim 8-10, the topsheet may be constructed of polypropylene fibers (column 10, lines 58-60) and the cyclodextrin may be dispersed throughout the topsheet (column 7, line 7). With regard

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to claim 13, the cyclodextrin may comprise an alkyl ether group (column 15, lines 19-27). With regard to claim 16, the silyl ether group is not required in the claims. With regard to claim 17, the substrate may be spunbonded (column 10, line 45). With regard to claim 18, the cyclodextrin may be dispersed uniformly (column 14, lines 46). With regard to claim 19, the absorbent core may be made of cellulosic fibers (column 7, lines 14-30) and the cyclodextrin may be dispersed in the core (column 7, line 6).

11. Claims 1-3, 7, 8, 11-16, 18, 22, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Otani et al. (JP 55-115440, English translation).

Otani et al. monofilament fibers drawn comprising between 0.1 and 30% zinc powder mixed with acrylonitrile polymer (page 1). With regard to claims 2 and 3, Otani et al. teach the zinc powder have a particle size of less than 1 micron (page 3), and specifically 0.5 microns (page 5). With regard to claim 8, acrylonitrile polymer is thermoplastic. With regard to claims 11-16 and 25, the presence of cyclodextrin is not required in the claims. With regard to claim 18, Otani et al. teach homogeneous dispersion of the powder (page 4).

### ***Claim Rejections - 35 USC § 102/103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 12 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Trinh et al.

Although Trinh et al. do not explicitly teach the limitation of low moisture content, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. cyclodextrin) and in the similar production steps (i.e. dispersed in the fibrous substrate) used to produce the fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed low moisture content would obviously have been provided by the process disclosed by Trinh et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

***Claim Rejections - 35 USC § 103***

14. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trinh et al. in view of Wood et al. (U.S. Patent No. 5,776,842).

Trinh et al. do not teach all the possible substituents that the cyclodextrin material can comprise. Wood et al. teach cyclodextrin material that contains all the various claimed substituents (column 8, line 35 – column 10, line 62). Wood et al. teach that substituents can be placed on a cyclodextrin to provide uniform dispersion on a substrate (column 8, lines 15-20). It would have been obvious to a person having ordinary skill in the art at the time of the invention to use the moieties taught by Wood et al. in the cyclodextrin of Trinh et al. in order to provide cyclodextrin material that can

better interact with polymer and provide uniform dispersion on a substrate, as taught by Wood et al.

### ***Response to Arguments***

15. Applicant's arguments filed September 6, 2005 have been fully considered but they are not persuasive.

16. Applicant argues that Trinh et al. disclose to adhere or attach the cyclodextrin to a fiber's surface as a coating after the fiber has been manufactured. Applicant asserts that this differs from the present invention because Applicant disperses cyclodextrin into the fiber material before the fibers are produced. However, Applicant's claims are not read to be as limited as what Applicant argues. Claim 1 summarily recites (a) fibers and (b) various types of particles dispersed in the fibers. The claims do not recite how the particles are dispersed in the fibers. The claims do not recite that the particles are dispersed within the fiber material before manufacturing the fiber. The claims do not recite that each fiber must have particles dispersed therein. The claims are read as broadly as possible. The current claim language says that the particles are "dispersed in the fibers." This limitation would include a fibrous substrate that had a cyclodextrin coating applied thereto because cyclodextrin would be dispersed in the fibers. The coating becomes part of the fibers. Applicant's arguments might have more validity if more specific language as to the dispersion were used. However, the claim does not clearly point out that the cyclodextrin is dispersed *within* each and every one of the fibers.



17. Applicant argues that the cyclodextrin of Trinh et al. must be solubilized when contacted by urine, menses, or aqueous fluid. Applicant asserts that the present invention is based on a completely different principle where the particles do not solubilize. However, this argument is outside the scope of the claims. Trinh et al. meet the limitation of the particles being "dispersed in the fibers."

18. Applicant argues that the limitation of the cyclodextrin material has at least a low moisture content of about 1 wt.% based on the cyclodextrin material is not inherent to Trinh et al. Applicant asserts that Trinh et al. will have a moisture content being much greater than 1 wt.%. However, Applicant offers no proof of this assertion. The Examiner cannot be sure of what the moisture content would be of the material based on argument. Additionally, if the moisture content of the cyclodextrin material of Trinh et al. were greater than 1 wt.%, it would meet the claim limitation. The claim recites that the moisture content be at least 1 wt.%. Thus, any value greater than 1 would meet the claim limitation.

### ***Conclusion***

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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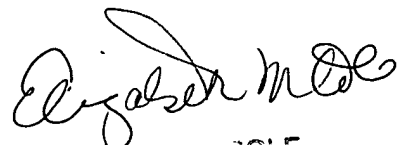
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (571) 272-1479. The examiner can normally be reached on normal business hours, but works flextime hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRP  
Jeremy R. Pierce  
November 2, 2005

  
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